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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/652,038	09/02/2003	Michael G. Bodary	03122	1551
23338	7590	10/31/2005	EXAMINER	
DENNISON, SCHULTZ, DOUGHERTY & MACDONALD			MAI, TRI M	
1727 KING STREET			ART UNIT	
SUITE 105			PAPER NUMBER	
ALEXANDRIA, VA 22314			3727	

DATE MAILED: 10/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/652,038	Applicant(s) BODARY ET AL.	
	Examiner Tri M. Mai	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

1. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Olson (1979992). Olson teaches a container upward tapered frusto-conicle portion paperboard material having a circumferential grain direction (pg. 3, ln. 11-13).
2. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Lehmann (2344359), or in the alternative, over Lehmann in view either Olson, or Lee (2014477), or McConnell (3926657). Lehmann teaches a container upward tapered frusto-conicle portion of paperboard material having a circumferential grain direction (note the blank in Figs 1 and 2 that would have a grain direction that of the machine direction).

Note the container in Lehmann would have a circular base as shown in Fig. 7.

Regarding claim 3, the container shown in Fig. 3 would meet the claimed limitations.

In the alternative, either Olson (1979992) or Lee teaches that it is known in the art to provide a conical container with circumferential grain direction (Olson: pg. 3, ln. 11-13; Lee: pg. 2 ln. 16-17). It would have been obvious to one of ordinary skill in the art to provide a frusto-conicle container with circumferential grain direction in Lehman as taught by either Olson or Lee to provide flexibility.

Furthermore, McConnell teaches that it is known in the art to manufacture a container in either direction. It would have been obvious to one of ordinary skill in the art to provide a conical container with circumferential grain direction in Lehman as taught by McConnell to provide an alternative direction.

3. Claims 6-9, and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Lehmann rejection, as set forth above, and further in view of Eisman et al. (5229182). It would

Art Unit: 3727

have been obvious to one of ordinary skill in the art to provide multiple rows in staggered relation to in Lehmann as taught by Eisman to provide save material and to facilitate mass production easily.

Regarding claim 12, it would have been obvious to one of ordinary skill in the art to provide the material in the thickness as claimed to provide the desired strength of the container.

4. Claims 1-9, and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eisman et al. (5229182) in view of either Olson, or Lee, or McConnell. Eisman teaches a carton blank having multiple rows. It would have been obvious to one of ordinary skill in the art to provide the blank with grain in the circumferential grain direction as taught by Olson or Lee or McConnell to provide flexibility in the final container.

Regarding claim 12, it would have been obvious to one of ordinary skill in the art to provide the material in the thickness as claimed to provide the desired strength of the container.

5. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Lehmann of Eisman rejections, as set forth in paragraphs 3 and 4, and further in view of Aloisi (5029749). Aloisi provides further evidence that It would have been obvious to one of ordinary skill in the art to provide a container with the thickness at .01 inches (col. 3, ln. 59). Thus, it would have been obvious to one of ordinary skill in the art to provide the material in the thickness as claimed to provide the desired strength of the container

6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over the Eisman rejection, as set forth above, and further in view of Herbst et al. (4552264). It would have been obvious to one of ordinary skill in the art to use the arrangement of the blank in Eisman

Art Unit: 3727

combination to manufacture the container in Herbst to enable one to manufacture different types of containers.

7. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herbst et al. (4252264), in view either Olson or Lee or McConnell. Herbst teaches a container upward tapered frusto-conicle portion of paperboard material. It would have been obvious to one of ordinary skill in the art to provide circumferential grain direction in Herbst as taught by either Olson or Lee or McConnell to provide flexibility in the final container.

8. Applicant's arguments filed 08/09/05 along with the 37 CFR 1.132 declaration of have been fully considered but they are not persuasive.

1) With respect to 37CFR 1.132 affidavit.

Affidavits or declarations, when timely presented, containing evidence of criticality or unexpected results, commercial success, long-felt but unsolved needs, failure of others, skepticism of experts, etc., must be considered by the examiner in determining the issue of obviousness of claims for patentability under 35 U.S.C. 103. (MPEP 716.01(a)).

However, the rejections of Olson, Lehman, Eisman as set forth above, are rejections under 102(b). The declaration is ineffective to overcome these rejections.

2). With respect to the tests results, applicant test is direct to a blank shown in Fig. 1. The tests result must be compared with the applied art in order for the affidavit to be effective, not just a specific type of container so a nexus can be established. Clearly, the examiner submits that the scoop as shown in Fig. 4 of Eisman would have resulted in a saving substantially better than the claimed scoop.

3). With respect to the paper savings from reduces scrap area, it is noted that the test result is comparison to a specific type of the container (the undulating portion). Furthermore, it

Art Unit: 3727

seems that the amount of scrap is based on the geometric design of the container. However, this specificity is not being claimed at all. It is noted of the scrap at the recess area. In the container of Eisman, there is no undulating portion. Thus, the blank in Eisman would have less scrap compared to the container as set forth in the affidavit.

4). It is noted that the amount of scrap area is also dependent on the area of blank being used for making the container. Thus having a larger blank would have less scrap at the perimeter portions. This specificity is not being claimed at all. Thus, the affidavit is ineffective to overcome the combined blank of Eisman in view of Herbst et al.

5). With respect to the thickness of the blank, the thickness of the blank has nothing to do with the scrap area from the blank. Thus, the affidavit is ineffective to overcome the rejection of claim 12 with respect to the desirability of one of ordinary skill in the art to have the blank at the desired thickness at .012. Furthermore, it is noted of the references of Aloisi (5029749). Aloisi teaches the a container can be a thickness at .01 inches (col. 3, ln. 59). Furthermore, Varano (5226585) teaches a container can be made from paperboard having a thickness ranging from .014 inches, .016 inches, or .013 inches (col. 4, ln. 13-14, ln. 21). Clearly, having the blank at the desired thickness at .012. is within one of ordinary skill in the art.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

Art Unit: 3727

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tri M. Mai
Primary Examiner
Art Unit 3727

